



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-K-

DATE: JAN. 18, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a music teacher, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she meets at least three of the ten criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a music teacher at [REDACTED] in [REDACTED] California. Because she has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner only fulfilled two of the initial evidentiary criteria, published material under 8 C.F.R. § 204.5(h)(3)(iii) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner maintains that she meets three additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

A. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner contends to meet this criterion based on her receipt of the “Gold Award” at the [REDACTED] and “Silver Award” at the [REDACTED]. As it relates to the [REDACTED] award, the

Petitioner references a letter from [REDACTED] a tenor, who described the competition as “a platform for the Chinese young people from all over China and all over the world to compete and display their artistic talents.” Moreover, the Petitioner submitted screenshots from news.163.com reporting on the fifth and sixth editions of the teenage festival. While the evidence relates to the festival, the Petitioner did not demonstrate that the garnered awards are nationally or internationally recognized for excellence in the field.¹

Similarly, regarding the [REDACTED] award, the Petitioner presented a letter from [REDACTED] a soprano singer, who claimed that “it is a national level music contest authorized by the Organizing Committee of [REDACTED]”² In addition, the Petitioner provided a document from the organizing committee indicating that the [REDACTED] is the grand comprehensive expert award of [REDACTED] approved by the Propaganda Department of the [REDACTED]. Further, she offered screenshots from news.focus.cn reflecting that “[t]he [REDACTED] serves the purpose of talent reserve for [REDACTED] and the purpose of building a platform for children with music dreams to display and exchange their talents.” Although the documentation indicates that the award and festival are sanctioned by a Chinese governmental entity, the Petitioner did not show that the field recognizes the [REDACTED] as a national or international award for excellence.

Accordingly, the Petitioner did not demonstrate that she satisfies this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner argues that she meets this criterion based on membership with the [REDACTED] and the [REDACTED]. She submits screenshots from the [REDACTED] website reflecting that “[p]eople [who] work in musical fields with musical achievements and having citizenship of People’s Republic of China . . . can submit [an] application.” Moreover, an individual “can be admitted . . . if being introduced by two [REDACTED] members, recommended by group members or [REDACTED] approved by [REDACTED] and completing the formalities.” Further, individuals in the performing arts must meet one of the following conditions: award winners at international competitions, national professional contests, or competitions at or above provincial levels; held an individual concert and received “good comment”; conductors with experience and with certain influence; solo singer, solo player, or opera protagonist for more than five years; second level or above titles as performer or singer; or folk musicians with high artistic level, greater impact, and recognized by the community. Similarly, the Petitioner presented screenshots from the [REDACTED] website reflecting that applicants must “have influen[ce] in the

¹ See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

² [REDACTED] also indicated that “[t]he winner’s teacher will be awarded the ‘Excellent Music Teacher Award.’”

business domain . . . of the [REDACTED] and either “[r]anked among top three in or above provincial professional competitions” or “issued a few works on professional publications above provincial and municipal levels and has exerted a certain level of influen[ce].”

In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.³ While the associations limit membership by requiring applicants to achieve a certain level of accomplishment, such as winning an award at an international or national competition or performing as a solo artist for five years, the Petitioner has not demonstrated that such requirements rise to the level of “outstanding achievements” consistent with this regulatory criterion. Furthermore, the Petitioner did not establish that the individuals responsible for judging the membership candidates for these organizations are comprised of recognized national or international experts.

As such, the Petitioner did not establish that she fulfills this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

Although the Director determined that the Petitioner satisfied this criterion, we disagree. Specifically, the Petitioner did not demonstrate published material about her in professional or major trade publications or other major media, which include the title, date, and author.⁴ The record reflects that she submitted an article about her from the *International Daily News*. In addition, she provided a screenshot from *Wikipedia*, which claimed that *International Daily News* “is a major Chinese-language newspaper in North America and Indonesia.” We note that *Wikipedia* is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. See *General Disclaimer, Wikipedia* (January 16, 2019), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008). Moreover, *Wikipedia* does not reference or cite to source information to support its claim that the newspaper is a “major” medium. Further, while *Wikipedia* indicates that the publication has a national circulation of 50,000, the Petitioner did not establish that such figures show major medium status consistent with this regulatory criterion.

The Petitioner also presents two articles published on a number of websites, including js.news.163.com and news.ifeng.com. The Petitioner did not submit evidence to demonstrate that

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

any of the websites are considered major media, and she did not include the required author of one article.⁵

For these reasons, the Petitioner did not establish that she satisfies this criterion. Accordingly, we withdraw the Director's finding for this issue.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner submitted evidence showing that she participated as a judge at a children's singing and talent contest. As such, the Petitioner demonstrated that she fulfills this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

While the Director determined that the Petitioner met this criterion, we disagree. Initially, the Petitioner did not claim eligibility for this criterion. However, in response to the Director's request for evidence, she submitted three authored articles that were published after the filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). For these reasons, the Petitioner did not establish that she satisfies this criterion. Accordingly, we withdraw the Director's finding for this issue.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r. 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of S-K-*, ID# 1920737 (AAO Jan. 18, 2019)